exempting such lands. Four justices dissent from this view and say that the Legislature must perform the trust "in accordance with the powers and under the restrictions imposed by the Constitution of the State."

EVIDENCE—RAILROADS—MASTER AND SERVANT—NEGLIGENCE.— HASIK V. ALABAMA & VICKSBURG RY. CO., 28 Sou. Rep. 941 (Miss.).—In an action by an injured person against a railroad company for injuries sustained, the defendant company offered evidence of the general careful habits of the engineer, prior to the accident. *Held*, admissible.

This decision is at variance with the weight of American authority and goes further than any previous decision in admitting evidence of this kind. The distinction is to be carefully drawn as to the purpose for which such evidence is offered. In case of injury to a co-employee it is admissible for the purpose of showing that the defendant exercised the required degree of care in the selection of its employees, or for the purpose of showing that the defendant was culpably negligent. In this case, however, no such state of facts was involved. *Robinson* v. *R. R. Co.*, 7 Gray 92; *City of Delphi* v. *Lowery*, 74 Ind. 525. *Contra, Elevator Co.* v. *Neal*, 65 Ind. 438; *Gahagan* v. *R. R. Co.*, 1 Allen 187; *Peterson* v. *Adamson*, 67 Iowa 739, 16 E. D. Smith's Rep. 271; *Dunham* v. *Rackliffe*, 71 Me. 345.

INSPECTION OF PARTY'S PERSON—POWER OF COURT.—STACK V. N. Y., N. H. & H. R. R. Co., 58 N. E. 686 (Mass.).—*Held*, the power of a Court to order a party in a personal injury case to submit to inspection of his person in order to enable examiner to qualify as a witness, did not exist.

This decision follows the doctrine established in *Railroad Co.* v. *Botsford*, 141 U. S. 250, which is also followed in New York and Maryland; *McQuigan* v. *Railroad Co.*, 129 N. Y. 50; *Penn. Co.* v. *Newmeyer*, 129 Md. 401. The contrary rule is established in many States. See "*The Power to Compel Physical Examination in Case of Injury to Person*," 1 Yale Law Journal 57, where cases to the contrary are collected.

INSURANCE—ARBITRATION—CONDITION PRECEDENT—RIGHT TO SUE.—WESTENHAVER, ET AL. V. GERMAN-AMERICAN INS. CO., 84 N. W. Rep. 717.—Plaintiffs held policy which made arbitration a condition precedent to right of action for loss. Arbitrators failed to agree upon an umpire and plaintiffs sued. *Held*, in the absence of bad faith on part of insurer plaintiffs must propose other arbitrators with view to agreement, and that they could not arbitrarily set aside the arbitration clause and sue.

It is a mooted question as to how far either must go in his efforts to secure appraisal where both are free from fraud. It has been said that no cause of action lies until some award is made by arbitration. *Canal Co.* v. *Penn. Coal Co.*, 50 N. Y. 267; *Herrick* v. *Belknap*, 27 Vt. 673. The true rule is that under such a contract the party wishing to sue must show that he has done all that he could have done to carry out the contract.

INTERNAL REVENUE ACT—UNSTAMPED INSTRUMENTS—EVIDENCE IN STATE COURTS.—SMALL ET AL. V. SLOCUMB ET AL., 37 S. E. 481 (Ga.).—*Held*, that the Internal Revenue Act of 1898, declaring unstamped instruments inadmissible in evidence, is limited to Federal Courts only, and not to preclude admission of such instruments in an action in a State Court.

The Courts recognize the power of Congress to levy and collect taxes by requiring revenue stamps to be placed upon certain written instruments, and

the power to punish the failure or refusal to comply with that requirement, but the majority of the cases decided under the earlier acts, and all those decided under the act of 1898, in which the question has been expressly determined, hold, that the provision excluding unstamped instruments from evidence is inapplicable to the State Courts. *Carpenter* v. *Snelling*, 97 Mass. 452; *Griffin* v. *Rauney*, 35 Conn. 239; *Rockwell* v. *Hunt*, 40 Conn. 328; *Lynch* v. *Morse*, 97 Mass. 458; *Weltner* v. *Riggs*, 3 W. Va. 445; *Knox* v. *Rossi*, 57 Pac. 179. *Contra*, *Turnpike Co.* v. *McNamara*, 72 Pa. St. 278.

JUROR—CRIMINAL LAW—COMPETENCY.—STATE V. MAXFIELD, 28 So. Rep. 997 (La.).—Juror stated that he had talked with two witnesses whom he knew to be truthful men and that it would take strong evidence to alter the opinion he had formed, but stated further that he had no fixed opinion and his mind was in such condition that if accepted he would render verdict according to law and evidence. *Held*, competent juror.

This seems to be held in Louisiana decisions (45 La. 979; 35 La. 357), but almost without exception the contrary is held in the remaining States.

LOBBYING CONTRACTS—PRESUMPTION AS TO LEGALITY.—DUNHAM V. HASTINGS PAVEMENT CO., 67 N. Y. Sup. 632.—Plaintiff had contracted with the paving company to use all reasonable, honest and lawful efforts to secure for them the right to bid on paving contracts in New York city. *Held*, question of the legality of the contract was a question for the jury.

Mills v. *Mills*, 40 N. Y. 543, held that such a contract was void on its face as against public policy, but *Cheseborough* v. *Conner*, 140 N. Y. 382, held that such a contract was entitled to the presumption of legality, and that it was a question for the jury.

MUNICIPAL CORPORATIONS—BILL-BOARDS—AUTHORITY OF COUNCIL—CONSTITUTIONAL LAW—STATUTES—RESTRAINT OF TRADE.—CITY OF ROCHESTER V. WEST, 58 N. E. 673 (N. Y.).—City of Rochester was authorized by statute to license and regulate bill-posters and sign advertising. Acting under such authority, an ordinance was passed prohibiting the erection of bill-boards exceeding six feet in height without permission by the council. *Held*, the statute authorizing the ordinance is within the police power of the legislature and the ordinance is not unreasonable or an undue restraint of a lawful trade or business, or of the lawful use of private property, being intended to provide for the *safety* of the community.

Similar ordinances exist in Chicago and San Francisco, and since the rendering of this decision a bill has been entered in the New York legislature which prevents the erection of fences for advertising purposes more than four feet high on a building or ten feet high on the ground. This is to apply to Manhattan, Brooklyn and the Bronx. This, however, seems to be the first case to decide that such an ordinance is within the police power of the State.

NON-NAVIGABLE STREAMS—RIGHTS OF RIPARIAN OWNERS—FISHERIES—OBSTRUCTION OF STREAM.—GRIFFITH ET UX V. HOLMAN, 63 Pac. (Wash.) 239.—The owners of land on both sides of a shallow river, used only by persons fishing for pleasure from small rowboats, stretched a wire fence across the stream. Defendant, while in a rowboat, cut the wire and took trout from river. *Held*, that river was non-navigable, that plaintiffs had a right to maintain fence and that they had exclusive right of fisheries in waters flowing over their land.

This case is in accord with decisions of a majority of the States, that such rivers only are navigable as are susceptible of being used as highways for com-